

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICKY PATU,

Plaintiff,

v.

SGT ALEXANDER, PIERCE COUNTY
STAFF,

Defendants.

No. C14-5430 BHS-KLS

REPORT AND RECOMMENDATION
Noted For: September 12, 2014

Before the Court is Plaintiff's voluntary motion to dismiss. Dkt. 17. The undersigned recommends that the motion be granted.

BACKGROUND

On May 29, 2014, the Court granted Plaintiff Ricky Patu's application to *proceed in forma pauperis*. Dkt. 5. The Court reviewed Plaintiff's complaint (Dkt. 6) but declined to serve it because it is deficient. The Court ordered Plaintiff to file an amended complaint and provided guidance as to the legal standards that may apply to Plaintiff's numerous claims. Dkt. 6. Plaintiff filed two motions in July, one asking for appointment of counsel (Dkt. 10), and one asking for an extension of the deadline to file an amended complaint. Dkt. 11. The undersigned denied the motion for appointment of counsel and granted an extension, until September 12, 2014 for Mr. Patu file an amended complaint. Dkt. 16. Mr. Patu filed his motion to dismiss his action on August 12, 2014. Dkt 17.

DISCUSSION

Rule 41 sets forth the circumstances under which an action may be dismissed. Under Rule 41(a)(1), an action may be dismissed by plaintiff without order of court:

(i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

After service of an answer or a motion for summary judgment, dismissal by plaintiff must be sought under Rule 41(a)(2), which provides, in part, that:

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper.

No adverse party has been served with Plaintiff's complaint. The Court should grant Plaintiff's motion (Dkt. 17) and dismiss this action without prejudice.

WRITTEN OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **September 12, 2014**, as noted in the caption.

DATED this 22nd day of August, 2014.



Karen L. Strombom
United States Magistrate Judge